

CONSUMER PROTECTION COMMITTEE

of the

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Consumer Protection Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Wednesday, November 16, 2005.

MEMBERS PRESENT:

Legislator Cameron Alden • Chairman

Legislator Jay Schneiderman • Vice•Chair

Legislator Lynne Nowick

Legislator Jon Cooper

MEMBER NOT PRESENT:

Legislator Lindsay • Excused Absence

ALSO PRESENT:

Ma Knapp • Counsel to the Legislature

Warren Greene • Aide to Legislator Alden

Charles Gardner • Director of Consumer Affairs

Alexandra Sullivan • Chief Deputy Clerk of the Legislature

Joe Muncey • Budget Review Office

Kevin Rooney • Oil Heat Institute

MINUTES TAKEN BY:

Donna Catalano • Court Stenographer

(* THE MEETING WAS CALLED TO ORDER AT 1:12 P.M.*)

CHAIRMAN ALDEN:

Good afternoon. Welcome to Consumer Protection Committee meeting. We're going to start with the Pledge, and, Jon, would you like to lead us?

LEG. COOPER:

Sure. I'd love to.

SALUTATION

CHAIRMAN ALDEN:

I would ask you to just remain standing for one minute. As tradition, we take one moment of silence to honor those that have given their lives for this country and also in remembrance of those that are in harm's way right now.

MOMENT OF SILENCE

CHAIRMAN ALDEN:

Thank you. I have one card. Kevin, it looks like you are the only one who filled out a card, come on up. And as Kevin is coming up, I just want to put on the record that Bill Lindsay has an excused absence and he also has an excused absence for Parks.

PUBLIC HEARING

2140, adopting Local Law, a Local Law to limit price increases at gas service stations in Suffolk County to no more than once in any calender day (CARACAPPA).

MR. BEYER:

Hi.

CHAIRMAN ALDEN:

Hi, Kevin.

MR. BEYER:

Good afternoon. Are you waiting on me?

CHAIRMAN ALDEN:

Go ahead.

MR. BEYER:

I'm Kevin Beyer from the Long Island Gasoline Retailers Association. I'm here on behalf of my members. The bill that was put before about not changing the •• changing the price only one in a day in Suffolk County, I'm here to speak on that because we feel that's detrimental to us, because I don't feel that that's, first of all, it is necessary, being in the business for over 20 years, and not until Katrina has anything like this ever happened where the prices increased more than once in a day. None of the retailers, we're not out there that we want to raise the price more than once in a day. We don't feel like changing our signs, the computers and everything else that goes along with it plus all the extra paper work.

But what happened during those storms was that the price was increased to us. So by the price being increased to us more than once in a day, we needed to increase it, regardless if we received fuel prior to that or not. Just like now, if you're looking now what's happening is the price is going down continuously. I had a price decrease last week about three different times, I got one delivery, but I had to go down each time to stay with competition. The same thing just happened this morning. It went down this morning again. Most stations, if you're out there looking, you'll see the price is down. I got gas two days ago, so I'm losing on that end.

There's no way that we cannot go up when our price is increased to us. If it's increased and we already got that gas, we still have to go up accordingly because the next truck is coming within a few days and you have to stay with the market because you have to pay for that truck. You can't lose going up and coming down. There's just no way possible in this business. And like I said, we're not out there increasing it twice in a day. The only reason that was happening was because it's increased to us from the oil companies. So if they're putting it through to us, we have to us pass it along. That's just the way •• that's the way the market works. And as you can see what's happening in the market, it's coming down. It's market driven.

CHAIRMAN ALDEN:

Something nasty happened, and right now we have Congressional Hearings on the federal level, and they've got Big Oil in there, and Big Oil is doing a very, very elaborate song and dance routine and all that kind of stuff. But basically, what we saw out here, gasoline that had been manufactured prior

to the hurricane hitting was being jacked•up in price and consumers being, I think, really stretched and hurt.

Now that's something, though, that as far as I'm concerned, and as an attorney, the Interstate Commerce Act is the law of land, as far as I'm concerned, that's a federal concern. We have expressed ourselves, and I think Jon Cooper has done it in the past and I think I did it and I think everybody in this Consumer Protection Committee, we have asked for investigations into •• by the federal and by the state governments why a big company, oil company, would be allowed to jack up the price like that. And I'm not a big believer in price, you know, like, price controls and things like that because I do believe in the American system, you know, free enterprise system. But when somebody takes advantage of the consumer, and that's really what happened here, then the right authority has to step in and take some kind of action, and whether that be in the future some kind of sanctions on those major oil companies that participated in this.

Now on the local level, we did find a few companies that were •• you know, that were •• I think they were cited for price gauging. And if we have anybody here from •• I don't think Charlie Gardner is here today. Oh, we do have a representative from his office. I think that we went out and we did put out some citations on those things might have, you know, conducted themselves in an improper fashion, but you know, we're going to get to that in a few minutes. I think on the local level, we already have a few control in place where we can take that. The other thing that bears mentioning right now, and I hope the Federal Government looks into it, because I think that in this situation, and it is a catastrophe, and then we had a catastrophe here on Long Island, but in this situation, you had these major oil companies who also have outlets and retail stations, they tried to drive independents out of business by jumping the price in certain places. To the independents, they jacked the price up, but to their own retail outlet, they left the price low. So they were hoping to drive some of those guys out of business in a very short period of time. Maybe you can ••

MR. BEYER:

I can answer that. I actually have one station that was directly across the street, and that was happening to me. It was a direct competition with the oil company. They were selling it to themselves a lot cheaper than they were selling to their own stations because I have friends in the business, and we were calling to try to see how could they be doing what they're doing. And we were checking their DTW, which is the Dealer Tank Wagon, to see what they were paying. And if they were at that price, would that regular dealer be able to make a profit, and there was no way possible. I put •• there are • • like you said, there are things in place, and New York State does have a law in place that you can't under•cost sell. I actually put in a complaint with New York State about that, and it seems like they've been working on that.

Ever since that happened, they've •• the oil company that was doing that has laid low, they haven't been doing what they were doing. But they did it before the hurricane, but during the hurricane, it just became so blatant that it was •• it was •• you know, you couldn't believe what they were doing. If somebody else •• if somebody was 270, they were almost, like, 250. So you couldn't •• there was just no way to compete with them. And it really devastated my business. What we're going back and forth with this is you have to realize it's not on our end. So that's why this law will just •• it will just end up impacting us again. If it has to be done, it has to be done on a federal level or you have to do something, you know, with something in place •• if the price is raised to me twice in a day, you can't hinder my business by telling me I can't raise my price, it's just •• it's just not fair to us.

CHAIRMAN ALDEN:

Unless we want to hurt the little guy, the retail end of it.

MR. BEYER:

If there was something in place against the oil companies where they couldn't do it more than once in a day and it passed on to us that way, that's •• you

know, that's something for consideration. But not like this as it stands, because now the onus is back on us again, and we can't absorb the cost all the time. Not only does the cost of the price go up, but everything goes up with that; the credit card fees and everything else that's attached to that. So if it goes up once in that one day •• and I can't •• and it goes up again •• like I said, I've been in the business 20 years, it's never happened before. This is the first •• during the storm is the first time. And I'd like to mention, before Katrina, they were raising the price to us four days prior to the storm. So nobody knew if there was going to be any outages, nobody knew if anything was going to be down, but they still increased the price four days consecutively, every single day to us, and that's when we had to pass it along.

After the second storm, because there was so much political •• you know, so much on the political agenda about this, the oil companies raised the price two cents, and that was after everything did get hit down •• down by Texas. The only reason they did that is because they knew the spotlight was on them.

And the last thing is, look who made all the profits during the last quarter. We spoke about this. I think I was in here last year when the price started going up. This was prior to any storms, back in May, and I said, let's watch and see what happens when the quarter ends. Well, now the quarter ends, and they have the record profits. It's not like us, you know, retailers have the record profits.

CHAIRMAN ALDEN:

And, Kevin, I'm probably a little older than you, but I remember back in '70s, and we had a number of bus companies. The family and myself were involved in school bus transportation of students. Even though we had long •term contracts with some of the major oils, they raised •• in one day in particular I can remember, they raised the price to us three times. While we had buses out trying to get the kids to and from school, they hit us with three

separate price increases on one day when we already had a long-term contract in place.

So it's happened •• you know, it happens once in •• not even going to say blue moon, but it does periodically happen. It's been 20 or 30 years since the last time I can remember it happening. But I'm going to state that I like the intent of what Legislator Caracappa is trying to do, because what he's trying to do is protect the people, the consumers, from getting gauged. Unfortunately, when we target the retailers, that's not where I feel the problem lies. I think the problem lies, you know, a couple of zip codes above. That's where I think we have to •• or focus our attention and try to get some kind of restraints or join with the federal government and New York state Government in trying to do that.

Now, what I'd like to do is I'd like to treat Kevin's testimony as a presentation for the public hearing also, because I don't have any cards for the public hearing. And your intention was to speak at the public hearing on this also?

MR. BEYER:

Yes.

CHAIRMAN ALDEN:

So if there's some way you can do that, Donna, I'd appreciate that.

MS. CATALANO:

Sure.

LEG. ALDEN:

We all have questions, so we'll start with Legislator Nowick.

LEG. NOWICK:

You know, I'm very happy that you came down here, Kevin, to explain this a little bit to us so we understand why prices go up and why they go up more than once in a day. I think it's important to put that on the record so at least we know it's not the retailer. Did you say that this rarely happens, only in times of crisis like a hurricane?

MR. BEYER:

There have been other crisis that I've lived through, and this never happened. I mean, even when we had last year or the year before when the electric went out, you know, all over New York and you had that crisis when the terminals were down because the terminals couldn't fill the trucks to even get the gas out, they didn't do it then either. So as long as I've been in business, it's never happened until now.

LEG. NOWICK:

So it's only happened now, and it's through the major oil companies raising their prices even four days before Katrina. Now, did that happen again, although there are not •• I don't know if Wilma has affected any of those oil refineries.

MR. BEYER:

Actually it did. They did have to shut down for a while, and they were disrupted. But I think •• I think because of all the pressure they received, they didn't go up they way they did prior to Katrina. They •• like I said, I was only raised two cents after that hurricane, which was nothing compared to the way we were raised before Katrina, before it even hit and we knew it

was happening.

LEG. NOWICK:

So it's the little guy, once again, that gets hurt?

MR. BEYER:

Well, just like the cost to consumers, my truck went •• in a matter of a week's time went from 20, maybe \$22,000 for one truck to pull into my station to over \$36,000. So you have to make up for that, you have to pay for that truck coming in. It's the same amount of gallons.

LEG. NOWICK:

Are you just about back to where you were as far as price before Katrina?
Are you just about back to that ••

MR. BEYER:

No. It's still very high. I still feel it's too high. It's still before what Katrina was. It is coming down now. People are just •• I think they're kind of getting over that sticker shock of it and not realizing that we were still paying very high prices throughout the summer of \$1.79, \$1.59, which was still very high prior to Katrina. But this was, you know, an easy way to get a good run up for them.

LEG. NOWICK:

Now we see 2.35 and we're happy.

MR. BEYER:

Right.

LEG. NOWICK:

Okay. Thank you. Thank you for your testimony.

CHAIRMAN ALDEN:

Just before we go to the next two speakers, Donna, I'd like to ask you actually formally reform the minutes to reflect a little bit of confusion on my part, but I thought that this might have been a public hearing that was scheduled for the General Session, but after conferring with Legislative Counsel, it is definitely scheduled here, so I'm going to ask the Clerk's Office was the publication duly ••

MS. JULIUS:

Yes, Mr. Chairman. Duly filed and in proper order. I have it right here.

CHAIRMAN ALDEN:

Thank you very much.

MS. JULIUS:

You're welcome.

LEG. ALDEN:

Then the minutes would be reformed to show that the public hearing was opened and Mr. Beyer's comments were for the public hearing. This question

and answer period will be the public hearing. So now we'll go right down the line, Legislator Schneiderman.

LEG. SCHNEIDERMAN:

First, relating to a comment that was just made about the little guys getting hurt. Are there a lot of little guys in this business, are there a lot of Mom and Pop gas stations?

MR. BEYER:

There are not many of us left. Little by little we're getting forced out by the major oil companies doing things like Mr. Alden said, Legislator Alden said about the oil companies keeping the prices down •• you know, arbitrarily keeping them down in their own locations this way they can put people out that are around them. So that's happening more and more. The prices of just staying in business itself have increased rapidly between the rents that we're being charged by the oil companies and everything else that's associated, between the licensing fees and insurances and everything else. But the oil companies have constrained us, and they've found •• they've been marketing ways to keep us •• to keep our margins very low, and especially when they're taking over their own locations.

LEG. SCHNEIDERMAN:

And the organization that you're speaking on behalf of, that's the Independent Owners, or you're speaking for gasoline retailers in general?

MR. BEYER:

Gasoline retailers in general, meaning that we're •• we're also franchisees whether it be a Shell franchisee or SUNOCO, EXXON. I mean, I have SUNOCOs, Shell dealers, but also the independents are also part of our association.

LEG. SCHNEIDERMAN:

When you buy gasoline, do you have choices or must you buy from only one company?

MR. BEYER:

That's the difference between a franchisee and the independents. A pure independent with the •• the ones that you'll see out there with, like, a real no •name gas, they actually have •• most of them don't have a contract and they can shop around. And in times like this when the price is coming down, they have a lot of options, and they are able to really bring down the price because they can shop around. Guys like us who are franchisees cannot do that. We're bound to whatever company we're signed with, whether it be SUNOCO, Shell, EXXON or Mobile, that's the way it is. So the independents do have •• for most of the time, they have the advantage over the rest of us because they can shop around. When the price is going up, that's why you saw that they were higher than us.

LEG. SCHNEIDERMAN:

When you get a delivery •• I think you spoke to a 30,000 gallon truck or something like that.

MR. BEYER:

No. It's only •• believe it or not, it's 11,600 gallons, and I'm paying 35,000 for it.

LEG. SCHNEIDERMAN:

Oh, that's the 35 I heard. Okay. So it's 11,000 gallons. Now, they •• you have a storage tank under the ground, how often does that deplete itself? Does that deplete itself in the course of a day?

MR. BEYER:

Most stations probably hold about enough storage for about two •• about three days, three days to four days.

LEG. SCHNEIDERMAN:

So to understand why this is a problem with the inability to change the price more than once in a day, when you are filling up that tank, which is going to last you three days, you're paying a specific amount, you ought to be able to set your price based upon what they're charging you unless you are pricing the next load, which is •• you don't know the price.

MR. BEYER:

That's the way the market works. The market has always been that way. The market works on what the price is •• the current price. What I can do right now is go on the internet and see what my current price is, and that's how you have to market it. You have to structure it that way, because like I

said, for the past •• and now we're on this run•down. With the price coming down all the time, we're constantly losing on each truck, because if I got gas yesterday and the price goes down a nickle today, I can't wait for my next truck to go down a nickle, because I have to meet competition. I have to go down, because I got •• I can't sit there and wait four days at a high price, because now I won't get rid of it in four days, because everybody else around me is lower. So you are always working on the market. So whatever the price is today, that's how you're working it. If the price goes up twice today, I'd move. If the price went down twice today, I would move also. That doesn't usually happen either.

LEG. SCHNEIDERMAN:

So it's not based what you've paid, it's based on the price that day for gasoline?

MR. BEYER:

Exactly.

LEG. SCHNEIDERMAN:

So the inability to change your price could hurt consumers, because you couldn't go down, you also couldn't go up.

MR. BEYER:

Yeah, but you know what? You're not have price go down twice in a day. The oil company is never that generous. Going up •• and like I said, that's

never really happened before until this time.

LEG. SCHNEIDERMAN:

So it's more likely to up twice in a day than go down twice in a day.

MR. BEYER:

Right. They went up at 50 cents at one clip and 20 cents, now they're coming down and two and three cents.

LEG. SCHNEIDERMAN:

So what would be the effect •• let's say this law does go through and you can't change •• you can't up your price twice in a day, what happens if the price of gasoline goes up, you've already raised your price once?

MR. BEYER:

What would end up happening •• if this law went into effect, as a business owner what would happen is if I'm concerned and there's a run•up the way it was and the price is going to go up again, I might either put out on the street a higher price than I normally would have, or if the price ended up going up again, I might have to make a business decision to shut down until that 24 hour period is over, because I can't afford to loss that amount of profit or loss, you know, as the price is going up. So if I'm going to have to sell that gas out when I can't increase the price for another 24 hours, it might not be a smart business decision on my part, which also is going to trickle down to other dealers. You know, people are •• in this business, you're working on

pennies per gallon all the time, and that's the problem.

LEG. SCHNEIDERMAN:

But you wouldn't really be losing money, because you've already •• you know how much you paid for the gas you currently have. You're saying the price is based on really the next load and the market factor. You wouldn't be losing money and you would be competitive still, because everybody else would be going up. I'm using your own logic to try to understand how you get hurt. Why close, you're still making a profit because you ••

MR. BEYER:

Because I would be making less than what I need to be making for that next load. It goes on the market price of that •• you're working on the day •• it's the same way that the oil companies are actually trying to say what they do, even though their capacity is six months worth of capacity, they work on the price •• when you hear what's on the market today, that the crude •• the barrel of crude went down a dollar or two dollars, that's how they start marketing their price. They start marketing then, not from what they brought six months ago. And it's the same thing, we have to market on what the price is. Just like the •• the situation that is going on right now. Is I sat down and said well, I got gas yesterday and it went down today five cents, but I shouldn't go because I have to wait for the next truck to go down, you can't do it, because if my neighbor across the street already went down five cents, my neighbor down the block went down ten cents or five cents or seven cents, how do I sit back and just keep my price high? I can't stay in •• that's not competition. We have to •• we have to follow the market.

LEG. SCHNEIDERMAN:

Let's say you could go down •• you could go down on your price twice a day, so you're worried really about being able to go up twice in a day, and I don't see how •• how you lose any money by not being able to go up twice in a day when you're already paying for that gas at a particular price.

MR. BEYER:

Because you still have •• you have the next load that's coming and it's going to cost •• like I said ••

LEG. SCHNEIDERMAN:

Bu the next load is going to come •• you said the tank has to last you three days. So when •• you know, tomorrow you go up.

MR. BEYER:

Right. But that load •• the prior load cost me 25,000, the next load is going to cost me 30,000. You have to be able to make that up.

LEG. SCHNEIDERMAN:

But you're going to sell that \$30,000 load at a price that's commensurate with the cost of that gasoline.

MR. BEYER:

You still have to pay for that next load coming.

CHAIRMAN ALDEN:

Let me try to explain this way too. As a commodity, if •• and I was in the retail business for a long time. So if you buy something at \$10 and then you figure in your profit is going to be a dollar, so you make \$11, ten of it went to pay for the commodity, a dollar went for your operating and profit. Now if you have to replace those goods at \$20, now I've got to go to the bank and get a loan.

Now what happens if the next day it comes in at \$25? Now I've got to go to the bank and get another loan just to cover the new cost of goods. I'm not paying for my electric, my rent, I'm not paying my help and I have no profits. So in commodities, you guys •• what we're doing here is forcing little operators to play the commodities market and the commodities futures. So you're, in essence, putting them out of business, because they don't have the ability to go in and arrange for these type of loans. That don't cost them anything •• these loans are going to cost them something. So that's got to be figured into the cost of goods also. You have to understand how the commodities market works too. So that's really what they're saying. A new load coming in •• if you don't make enough on the load that you've got there, you can't buy the new load coming in.

LEG. SCHNEIDERMAN:

They're basically saying they want to be able to sell it for what it's worth, right?

CHAIRMAN ALDEN:

To stay in business.

MR. BEYER:

It's what it's worth that day on the market.

LEG. NOWICK:

Also, aren't you saying that you need •• on that Sunday, your price is lower, right, and you are charging for the gas you got two days ago, so it's a lower rate. But from what I'm understanding, the retailers need to have enough cash to pay for the load that's coming in two days, because •• is it a cash? I mean, you don't take a credit card ••

MR. BEYER:

Well, what's happening is the oil companies have us wrapped up that way too, because in the old days what used to happen was they would draft your bank account. Now what they're doing is they're actually tying up your credit card money. You used to get that also deposited in your accounts every day. So if I did \$3000 worth of credit card fees •• money today, it would you be in my bank tomorrow. Now the oil companies, they hold all your credit card money until your gas load comes in. So they're making money on your credit cards, you're not able to use that, and then when your gas load comes in, they're drafting you within 24 hours. So now you're sitting there with \$35,000 worth of product that they're going to draft out of your account before you've even sold that product. So it's •• you're working on always a very tight market with this.

LEG. NOWICK:

That's why the higher number.

CHAIRMAN ALDEN:

No. No. No. Another key factor here is gasoline and milk are two commodities that are very, very similar. You make a penny a gallon. You

don't have •• you know, there's not a big margin of error. You misprice, and you're out of business. So that's •• sorry. Legislator Cooper.

LEG. COOPER:

Thank you. First of all, I think it's become clear to everyone in this room just how tough a business you guys are in. And I did want to point out that the law that we were considering here, this is not the first of its type of country. This has already been enacted at least in the State of New Jersey. And I do know that I had read reports of service stations in New Jersey that closed at one o'clock in the afternoon and two o'clock in the afternoon, because they didn't want to lose money, so I know that that concern is real.

And I also believe that this legislation is certainly well intentioned, and I know this because originally it was my bill. I withdrew the bill, however, after I met with Kevin and _Catherine Odessa_ at LIGRA, and they educated me on this. And I realized it wasn't fair, and we would be penalizing the small local service station operators without getting to the heart of the problem. And what I've subsequently done, when Legislature Caracappa reintroduced my bill over my objections, I drafted a new resolution that's also going to be before this committee in the next cycle, and it was drafted working with representatives from LIGRA. And it really tries to accomplish the exact same goals, but I think in a more fair minded manner, because it not only prohibits the local service station operators from raising the prices more than once a day, but also prohibits the wholesale motor fuel distributors that sell the gasoline to the local service stations from raising their prices more than one a day.

LEG. NOWICK:

Can we do that?

LEG. COOPER:

Yes. That's something that Legislative Counsel worked on for some time, but we came up with a way that we can do this at the local level. Now, we still can't stop Big Oil from raising their prices to the wholesale motor fuel distributors. And there actually is something in the resolution that has exception where if they could document that their costs went up, they will be able to raise their price concurrently. But they have to document that their cost went up.

I think that the greater concern was that there were motor fuel distributors or service station operators that were unfairly raising their price even when their cost didn't go up. So in this case with this new resolution, until they can document that their cost went up, they would be prohibited from raising their price to the consumer. So that seemed like a fair approach to take. I don't know whether that's been done anywhere else in the country. As I said, there are other places that have done what they've done in New Jersey and what the resolution before us attempts to do, but it's simply not fair. And I don't think it really accomplishes the intended goal.

CHAIRMAN ALDEN:

Jon, does yours have a public hearing component on it?

LEG. COOPER:

Yes. The public hearing would be at the next •• it's being laid on the table at this meeting, so the public hearing will be on December 6th.

LEG. SCHNEIDERMAN:

And we'll be hearing from the wholesaler's lobby at that point, right?

CHAIRMAN ALDEN:

But you're public hearing is called for in general session or here?

LEG. COOPER:

General session.

CHAIRMAN ALDEN:

Any other?

LEG. COOPER:

You know what? I guess I put •• I generally have it at the general session, but maybe in this case ••

CHAIRMAN ALDEN:

Whichever way. You know, I'm just trying to get a sense of time, because what I'm going to suggest here is not to close this hearing, leave it open, we'll recess it, we'll be able to gather •• also Lynne is here from the •• she's the Chief Deputy County Attorney, and maybe they can do some research on the interstate commerce aspects of this, and we'll be able to introduce that into both of these public hearings. That way, we'll be able to make a completely informed decision on which way we want to go.

LEG. NOWICK:

So that will be here that public hearing?

CHAIRMAN ALDEN:

well, that will be up to Jon. You know, I'm not going to push him for a committee. But one way or the other, you know, we'll have that testimony to introduce to it. So I'm going to make a motion to recess this public hearing, seconded by Legislator Cooper. All in favor? Opposed?

LEG. SCHNEIDERMAN:

Are there other people here who want to speak on this public hearing?

LEG. ALDEN:

No, I just had the one card. Then we'll just throw it out there just before I slap the gavel down on it, does anyone else want to speak today on this public hearing? Come on up. Good. Because you'll have another shot at putting stuff on the record. Well, that way we'll have the interstate commerce and all that stuff. It's not that we're putting out the public, because you are going to be involved in implementing any type of procedures that we go with. So all right. It's unanimous then, we're going to recessed this public hearing. Thanks. **RECESSED.** Thank you. That would conclude the public hearing. I'll open the public session up again. Did anyone else want to address us from the public? No? All right. We're going to go right into the rest of the agenda.

Tabled resolutionS

1835, Adopting Local Law, a Local Law to amend Resolution No. 396 •2005 (COUNTY EXEC).

CHAIRMAN ALDEN:

Lynne asked to speak on this. Good afternoon.

LEG. LINDSAY:

Thank you very much, Chairman Alden. I have spoken on this bill before. It's relatively simple, in fact, I think I put it together very. And it's very, very, very simple. Basically the reason for it is just that there is no mechanism for enforcement of the bill. All the bill does is it sets up that mechanism. In doing that ••

CHAIRMAN ALDEN:

Lynne, could you go back and just say, you know, like, what it does and where the mechanism would be. You know, just start from the beginning.

MS. BIZZARRO:

Sure. You mean, in other words, what the original resolution does?

CHAIRMAN ALDEN:

Right. And then how this would change that.

MS. BIZZARRO:

Oh, okay. The original resolution basically targets installers of home heating system to notify the homeowner of the requirement to install detectors. And it's to basically penalize the installers for not giving the proper notification to

the homeowners. That's the gist of the bill. The problem with the bill •• I mean, I see it as a big problem, because I think if you're interested in targeting the installers for failure to notify the homeowners, you want to have a mechanism in the bill to do that. There is no mechanism in the bill.

The bill only states that the requirements of the article shall be enforced by the Suffolk County Office of Consumer Affairs. It doesn't indicate how they are going to enforce it, it doesn't specify under what section of our already existing Code that it will be enforced. So all I did was put together an amendment that does that. It sets up the due process necessary and the mechanism to enforce the bill.

By doing that, I set up •• you know, I basically state that a violation of the law it as follows, and the only way to impose that violation is to have a hearing held before the Director of Suffolk County Office of Consumer Affairs. By setting up that mechanism in the bill, I referenced two words that needed to be defined; violation and installers. It's important that we define those terms, because we want to make sure that we're not targeting the homeowner, but that we're targeting the installer for failing to notify the homeowner, and that's basically the crux of what my bill does. So what I do is I define installer and I define violation, and I make it clear we are not going after the homeowners. So all it's doing is it's clarifying that we are not going after the homeowners, that we are going after the installers. And it's putting in the enforcement mechanism we need to make sure we can go out and get these people.

CHAIRMAN ALDEN:

Lynne, have you had conversations with Consumer Affairs?

MS. BIZZARRO:

I have, yes.

CHAIRMAN ALDEN:

And they're okay •• are they okay with this version, because the prior time that we spoke with them they were not real happy with it?

MS. BIZZARRO:

Well, I had spoken Mr. Gardner on it originally, with the first bill that was passed, and he agreed with me that it could use •• he basically said it could use a mechanism clause. But he seemed okay with it the way it read without the mechanism clause.

MR. DRAGONETTE:

Hi. I'm Bruce Dragonette, the Assistant Director of Consumer Affairs. Mr. Gardner did not, let's say, include me in conversation that he might have had with Lynne, you know, on everything, so I am a little vague in, you know, what they had spoke about.

CHAIRMAN ALDEN:

Lynne, to be fair, can we do •• can we do this, can we table it just until two weeks, I think, when we have another committee meeting? That way you guys can talk and then either Bruce or Charlie can come in and tell us, you know, like, everything will be good on their end as far as enforcing it?

MS. BIZZARRO:

Sure.

CHAIRMAN ALDEN:

Because I want to see something that works. And it looks like you put the things in there that will make it work, and let's just make sure that we have a little conversation with Charlie, is that all right?

MS. BIZZARRO:

That's fine. Thank you.

MR. DRAGONETTE:

Thank you.

CHAIRMAN ALDEN:

Thanks. Motion by myself to table it one cycle, seconded by Legislator Nowick. All those in favor? Opposed? It's **tabled (VOTE:4•0•0•0)**.

INTRODUCTORY RESOLUTION

2140, adopting Local Law, a Local Law to limit price increases at gas service stations in Suffolk County to no more than once in any calender day (CARACAPPA).

CHAIRMAN ALDEN:

This is the one that we had the public hearing on. That has to be tabled, because the public hearing is still open. So 2140, motion by myself to table for the public hearing, seconded by Legislator Cooper. All in favor? Opposed? That's **tabled (VOTE:4•0•0•0)**.

SENSE RESOLUTIONS

S•66, Sense of the Legislature Resolution requesting the New York State Legislature suspend collection of sales tax on gasoline (SCHNEIDERMAN).

CHAIRMAN ALDEN:

As long as that doesn't affect our cut of the money, right?

LEG. SCHNEIDERMAN:

No. This would allow the County and the state to •• particularly Suffolk County to suspend for one sales tax quarter, for three months, the sales tax on gasoline, and then if it felt, it could extend it based on our fiscal situation for an additional sales tax quarter, another three months.

LEG. COOPER:

So this is not to cap, this is to suspend it?

LEG. SCHNEIDERMAN:

This is not a cap, this is a suspension of the gas tax.

LEG. COOPER:

And what would the fiscal impact be?

CHAIRMAN ALDEN:

Huge.

LEG. SCHNEIDERMAN:

Well, you would have to analyze it after three months to see if you want to continue •• what is it, three months?

LEG. COOPER:

Yeah, before we vote on this, shouldn't we know what the fiscal impact is?

LEG. SCHNEIDERMAN:

This was put in around the same time as we put in for the home heating, in fact, I think maybe even before that. We can get •• I don't know if BRO's done an analysis.

CHAIRMAN ALDEN:

Well, let me ask this question first. Let me just ask this first. Is this a two part process, we have ask New York State, they have to pass enabling legislation, then it would come back to us to see if we would actually enact that legislation; is that not correct? I'll throw it to either Budget Review or Legislative Counsel.

MS. KNAPP:

Actually, I shouldn't say yes so quickly. The state could theoretically simply suspend all sales taxes for a period of time and then we wouldn't have an opt •in. If what they were going to do is make is Suffolk specific, then they would do it so that Suffolk had to enact the local law.

CHAIRMAN ALDEN:

New York State could do that without this resolution?

MS. KNAPP:

Oh, absolutely, absolutely. New York State controls whether or not sales tax is collected on any commodity. They could alter the state law to suspend the collection of sales tax on gasoline statewide, yes.

CHAIRMAN ALDEN:

Okay. So what we're doing is asking New York State to do exactly that, suspend collection, at least in Suffolk County, maybe all over the state, and we didn't do an impact statement yet on that?

MS. KNAPP:

It does contain two Resolved, one asks that they suspend it statewide and other one says that if they're unwilling to do it on all sales tax, then the •• that the state would suspend it on the County portion.

LEG. ALDEN:

Budget Review.

MR. MUNCEY:

As far as I know, we haven't done an analysis on this as of yet.

CHAIRMAN ALDEN:

Okay. Legislator Nowick.

LEG. NOWICK:

I think maybe my question was partially answered. It's a Sense of the Legislature requesting New York State, does this mean that it will suspend the New York State sales tax or is it going to suspend all sales tax?

CHAIRMAN ALDEN:

Our sales tax is New York State sales tax. So if we ask New York State to suspend sales tax, all the sales tax, that includes our portion too. We're a portion of the New York State sales tax.

LEG. NOWICK:

Back to fiscal impact, so if we stopped this, even though it's called New York State tax, we're getting a portion of it, so we do get hurt by it a little bit. But we don't know •• we don't have the fiscal impact statement, right?

MR. MUNCEY:

Right. Because it's a Sense Resolution, normally they don't do a fiscal impact on it, but it would have a fiscal impact to Suffolk County.

LEG. NOWICK:

Maybe we should table it until we find out.

LEG. ALDEN:

Legislator Schneiderman, go ahead.

LEG. SCHNEIDERMAN:

I don't have a strong objection to tabling it. This bill is like the one we talked about before about the changing of the prices, and when they came at a time when gas prices were at all time highs, this was right around, you know, when Katrina was happening, and even though it's just coming before us today, they were filed quite some time ago. Things have calmed down a little bit. They're still •• gas prices are still very high, not quite what they were. But if you wanted to wait and have BRO do an analysis, I don't have a problem with that.

CHAIRMAN ALDEN:

I think the prudent path, as suggested by Legislator Cooper, was to find out what it cost us and then we can make a decision. Then if we after cut services or if we have to do certain things to mitigate that loss of revenue, then we can make up our minds whether we want to do that or not. So I would ask •• you know, what would it take you to do a little analysis?

MR. MUNCEY:

I'd have to meet with Robert, but the thing is if we decrease taxes in one area, we'll most likely have to raise them somewhere else or cut services. So it would most likely probably impact the property sales •• I mean, the property tax.

CHAIRMAN ALDEN:

I went through that too. I'm not going to ask for a formal, you know, analysis on, you know, whether we have to raise, you know, the property tax. I'd like to see just a cost analysis, just like if we did away with, you know, our end of the sales tax, how much •• just that raw number, not whether we have to raise another tax.

MR. MUNCEY:

In other words, if sales tax was cut for one quarter for gasoline, what is that number.

CHAIRMAN ALDEN:

Exactly. Kind of a simple fiscal impact.

LEG. COOPER:

If I can just ••

CHAIRMAN ALDEN:

Sure, Jon.

LEG. COOPER:

•• follow up on that. I'm just reading something •• I just Goggled something on the internet, and apparently there are a number of states that are considering suspending the state taxes on gasoline. One state has already done so, Georgia. And this is an analysis by the Center on Budget and Policy Priorities, and they've come up with many, many reasons why this should not be done. The first one they list is the question I was going to raise, it's that states cannot guarantee that a gasoline tax reduction will be passed along to consumers. So it's quite possible that the differential in taxes will end up going into the pockets, basically, of big oil. So it doesn't benefit local consumers •• or potentially will not benefit them at all. And coupled with the •• so it could reduce our revenues, force us perhaps to either increase taxes elsewhere or cut vital services all to line the pockets of the oil companies potentially. And there are about an dozen reasons why they feel it's a bad idea as well, so I Don't think we should rush into this. Even though it is a Sense Resolution, I think we should tread carefully.

LEG. SCHNEIDERMAN:

We've cut taxes on other things, and we really haven't raised that argument, you know, whether it's home heating fuel or clothing. You know, you can't really tell the retailer that they can't suddenly up their price so it stays the same. You just hope that their pricing is based on what they are paying, and they're not gauging in that matter.

But I know BRO doesn't agree with this type of thinking, but it was my feeling at the time that resolution was put together that gasoline prices were so high that we were making so much more in sales tax revenue off of gasoline than we had projected, that there was no reason to cut services because we were going to end up with an incredible surplus in sales tax revenue because of that •• because of those high prices of gasoline. Now, BRO, I think, feels that the money •• if it wasn't being spent on gasoline, it would be spent somewhere else where we would be getting some sales tax revenue. But I don't think it's a direct correlation. I think people do save some money in savings accounts, etcetera, where we don't get sales tax from, college funds, etcetera. So i don't think it's a one•to•one correlation. I think that •• at least in my original thinking on this bill was that we wouldn't have to cut programs because of the all the surpluses we were running because of the high price of gasoline.

LEG. COOPER:

Mr. Chairman, if I can just read ••

CHAIRMAN ALDEN:

Sure.

LEG. COOPER:

•• a couple more sentences. This is from the same policy analysis, gasoline taxes are incorporated into pump prices. If the tax is suspended, pump prices may or may not be reduced in order to pass along the full savings from a gasoline tax Suspension to consumers. With the supply of gasoline relatively fixed, at least in the short term, there is very little to stop the distributors and suppliers of gasoline from reducing prices by something less than the full reduction in tax and retaining the balance in the form of increased profits. As a result of the millions of dollars lost by states from a tax suspension, only a portion may benefit consumers. The remainder will go towards gasoline seller profits.

LEG. SCHNEIDERMAN:

Again, just to comment on that. I mean, we just heard testimony today about competition in the retail market for gasoline. So you would think that if somebody could cut back a little bit because of that •• you know, rather than keeping the price the same now that the sales tax is reduced, they'll do that so they can more competitive. So I don't necessarily buy that argument. And again, this really came out of a thought that, you know, we were profiting excessively while everybody was suffering and that, you know, to ease the burden on the public after Katrina with these super high gas prices, that this would be a way to do it, a three month suspension of that gasoline tax. We still basically would have, you know, the other, you know, nine •• nine months to have that higher tax, but for three months it would be suspended.

LEG. COOPER:

But a better approach may be •• and I think this is another Sense Resolution that we already approved •• would be to cap the sales tax at a certain level, whether it be two dollars or two and a half dollars.

LEG. SCHNEIDERMAN:

It's very complicated to cap it.

CHAIRMAN ALDEN:

That one is actually coming up next. We can take care of this one first, then we can deal with the next one.

LEG. COOPER:

I think at the very least, we should wait for the fiscal analysis before we rush into this.

CHAIRMAN ALDEN:

Legislator Nowick.

LEG. NOWICK:

While I also agree, it's our responsibility to get the fiscal impact statement, just make no mistake about it, when you talk about when Katrina happened and when the prices were high we wanted to do something to alleviate the pain so to speak, the prices are still high, they're still off the charts. So if we can do something, that would be a wonderful thing, but we must get this fiscal impact. So I would make a motion, if it's okay with you, to table it.

CHAIRMAN ALDEN:

All right. We have a motion to table, and that would be for one cycle to get the fiscal data that I think we need to look at, and I'll second that. All those in favor? Opposed? Unanimously **tabled (VOTE:4•0•0•0)**.

LEG. SCHNEIDERMAN:

So we'll have that analysis at the next meeting?

MR. MUNCEY:

Yes, you will.

LEG. SCHNEIDERMAN:

Thanks.

CHAIRMAN ALDEN:

You know what? Just one other bit of data if you can get it for us, I don't know if it's available or not, but my sense is that we are paying a tax on tax, because when gasoline is manufactured, there's •• I think there's a tax on the crude oil that comes out of the ground, and there's some kind of, like, an energy tax on it or something, a depletion tax on it, and then there's some kind of an excise or •• some kind of added on tax as it moves along the pipeline. So when it's distilled into gasoline, I think there's a tax that's also paid. So the final price is •• you know, when we charge a sales tax on that, that's a sales tax on top of oil depletion tax and some other kinds of taxes, aren't they?

MR. MUNCEY:

I don't know about the internal workings of the different, let's say, big oil companies, but there are all different kinds of layering from when it comes from the ground through to the transportation of it. And there's all different types of accounting systems. And that type of analysis might be beyond normal analysis, because I think at the federal level they're still struggling trying to unwind that as well.

CHAIRMAN ALDEN:

Okay. I mean, if you could give it a shot. If you don't have the numbers, that's fine too. You know, the most important thing would be the dollars that, you know, we'll be fooling it. But if you could get that for me ••

MR. MUNCEY:

What I plan to do is I'll meet with Robert and others and get a historical trend of what we've gotten in the last couple of quarters of the sales tax that's associated with gasoline.

CHAIRMAN ALDEN:

Good. And then the other avenue might be to go the DOE, because the Department of Energy might now type of, like, oil depletion tax and things like that that they charge. They might have a chart that's readily available.

MR. MUNCEY:

I'll look in to see, you know, what other taxes are associated besides sales tax.

CHAIRMAN ALDEN:

Good. Thanks a lot.

S•70, Sense of the Legislature Resolution requesting a cap on sales tax on gasoline (BINDER).

CHAIRMAN ALDEN:

There's no financial analysis on this one either. This would be the same thing, right? If you could give us ••

LEG. NOWICK:

Motion to table.

LEG. COOPER:

Second.

CHAIRMAN ALDEN:

Motion to table by Legislator Nowick, seconded by Legislator Cooper. All in favor? Opposed? That one is **tabled** for same reasons as 66 (**VOTE:4•0•0•0**).

S•73, Sense of the Legislature Resolution requesting the federal government to institute an investigation into gasoline prices (CARACAPPA).

Do we have a motion?

LEG. NOWICK:

Sure. Motion to approve.

CHAIRMAN ALDEN:

Motion to approve by Legislator Nowick, seconded by Legislator Schneiderman. All those in favor? Opposed?

LEG. COOPER:

As long as it's a bipartisan investigation. I'll cosponsor it.

LEG. SCHNEIDERMAN:

I'll cosponsor too.

CHAIRMAN ALDEN:

Okay. So Sense 73 is **Approved (VOTE:4•0•0•0)**. I don't see anything else on the agenda. Anybody else have anything they want to bring before the committee?

LEG. SCHNEIDERMAN:

Can I ask, how does that last •• well, it's different because it's the Federal Government investigating. We already passed a bill where the County is going to investigate.

MS. KNAPP:

The County bill was to •• was to retain a law firm to bring an antitrust action. This one asks that the United States Attorney General begin a federal investigation into the profits of Big Oil.

CHAIRMAN ALDEN:

And that would be taking it one step further. Congress is actually doing an investigation now, so they want to jump right to the Attorney General to bring the action. All right. Anybody else have anything to bring before the committee? No? Thank you very much. We stand adjourned.

(* THE MEETING WAS ADJOURNED AT 2:01 P.M. *)

_ _ DENOTES BEING SPELLED PHONETICALLY